

DAVID WOOD, JOHN MICHEL, ATKINSON, ROLLINS & CO.,
 AYMAR & CO., WOLFE & CO., STANWOOD & REID, S. A.
 WAY, J. D. & M. WILLIAMS, UDOLPHUS WOLFE, ALFRED
 ATKINS, GEORGE W. WALES, AND T. B. WALES & CO.

JUNE 15, 1860.—Ordered to be printed.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the following bills from the Court of Claims, viz: "For the relief of David Wood, merchant of the city of New York;" "For the relief of John Michel, merchant of the city of New York;" "For the relief of Atkinson, Rollins & Co., merchants of the city of New York;" "For the relief of Aymar & Co., merchants of the city of New York;" "For the relief of Wolfe & Co., merchants of the city of New York;" "For the relief of Stanwood & Reid, merchants of the city of Boston;" "For the relief of Samuel A. Way, merchant of the city of Boston;" "For the relief of J. D. & M. Williams, merchants of the city of Boston;" "For the relief of Udolphus Wolfe, merchant of the city of New York;" "For the relief of Alfred Atkins, merchant of the city of New York;" "For the relief of George W. Wales, merchant of the city of Boston;" and "For the relief of T. B. Wales & Co., merchants of the city of Boston;" have had the same under consideration, and report:

The claimants in these cases were importers of liquors, and paid duties on the quantities stated in the invoices. The reports of the gaugers showed a loss by leakage or otherwise. The claims are for the duties on the quantities in the invoices above the quantities gauged. The duties were paid without protest.

The Court of Claims decided that "the duties on the liquors not imported were illegally exacted and paid involuntarily," and reported the above recited bills for their relief.

Judge Blackford dissented from the opinion of the court, for the reason that the duties were paid without objection, written or verbal, and therefore the payments must be regarded in law as voluntary.

In the case of *Lawrence vs. Caswell et al.*, (13th Howard, 496,) Chief Justice Taney, in delivering the decision of the Supreme Court, said:

"The duty of one hundred per cent. *ad valorem* was chargeable on the quantity of brandy actually imported, and not on the contents

stated in the invoices. The overcharge, therefore, was illegally exacted, and the defendants in error were entitled to recover back the amount." * * "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of the objection. *Where no such protest is made the duties are not illegally exacted*, in the legal sense of the term."

In the same case it was decided that "since brandies do not pay a duty by the gallon, under the tariff of 1846, but an *ad valorem* duty, "they are not entitled to the deduction of two per cent." per leakage, which was allowed under the act of 1799 on liquors subject to duty by the gallon.

In the cases before the committee the duties were *ad valorem*, and were paid *without protest*. In the opinion of your committee, therefore, the claimants have no *legal right* either to the two per cent. reduction for leakage, or to receive back duties which were paid without protest.

Have they an *equitable claim*? With a single exception, the invoices disclose the fact that all of the claimants asked and received, from to time, such allowances for "damage" as the collector deemed it proper to make; consequently the claims are made up of the ordinary losses by leakage or evaporation, and include all apparent losses occasioned by the allowances or inaccuracies of the gaugers. In a series of importations, from 1847 to 1851, the government is charged with all deficiencies indicated by a comparison of the gauger's reports with the invoices. From an examination of three of the cases, embracing the largest, we find the following results:

G. W. Wales, Boston, 145,368 gallons French brandy; invoice value, \$81,897; deficiency by gauger's reports, 7,015 gallons, $4\frac{3}{10}$ per cent. Average invoice cost of brandy per gallon $56\frac{3}{10}$ cents. Add $4\frac{8}{10}$ per cent. for deficiency and the invoice cost was 59 cents per gallon for the quantity gauged.

David Wood, New York, 112,980 gallons French brandy; invoice value, \$61,368; deficiency in quantity, 1,982 gallons, or $1\frac{7}{10}$ per cent. Invoice value, $55\frac{3}{10}$ cents per gallon. Add $1\frac{7}{10}$ per cent. for deficiency, and the invoice cost was $56\frac{2}{10}$ cents per gallon for the quantity gauged.

Atkinson, Rollins & Co., Boston, 296,378 gallons gin from Rotterdam; invoice value, \$116,569; deficiency in quantity, 11,261 gallons, or $3\frac{8}{10}$ per cent. Invoice value, $39\frac{3}{10}$ cents per gallon. Add $3\frac{8}{10}$ per cent. for deficiency, and the invoice cost was $40\frac{8}{10}$ cents per gallon for the quantity gauged.

Charging the deficiency in quantity to the cost, the average cost of the French brandy imported into Boston, as above, was 59 cents per gallon. Add 100 per cent. duty and the cost was \$1 18 per gallon. The average wholesale price (between highest and lowest) of French brandy, as per Boston price current, April 1 in each year, from 1847 to 1851 inclusive, was \$2 11 per gallon. Profit to the importer over the average cost and the duty, 79 per cent.

Charging the deficiency in quantity to the cost of the French brandy imported into New York the cost to the importer was $56\frac{2}{10}$ cents per gallon. Add 100 per cent. duty and the cost was \$1 $12\frac{1}{2}$ per gallon. The average wholesale price (between highest and lowest) of French brandy in New York, April 1, 1847 to 1851, was \$2 40 per gallon. Profit to importers on both the average cost and the duty 110 per cent.

Charging deficiencies in quantity to the cost, the average cost of the gin imported into Boston, as above, was $40\frac{8}{10}$ cents per gallon. Add 100 per cent. duty and the cost was $81\frac{6}{10}$ cents per gallon. The average wholesale price in Boston of the gin, April, 1847 to 1851, was \$1 14 per gallon. Profit to importer over the average cost and the duty 39 per cent.

These liquors we feel it right to announce were sold, and the market price doubtless corresponded with the cost and duties actually paid, with the ordinary profits of the trade. The prices current certainly indicate that the importers have *lost nothing*; and even if anybody is entitled to make a claim upon the treasury it is not the importers, but rather the consumers, who have paid an enormous profit not only upon the cost of the liquor, but upon both *the cost and duties* paid by the importers. The bills before us embrace claims for over \$18,000, and there is at least \$100,000 in claims behind depending upon the same principles.

Your committee are unanimously of the opinion that these claims have no foundation either in law or equity, and recommend that they do not pass.

